STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2137

Eldo Abrahamson,
Relator,

vs.

Minneapolis Oxygen Comp-Joint Acct.,
Respondent,

Department of Employment and
Economic Development,
Respondent.

Filed June 30, 2014
Affirmed
Klaphake, Judge[*]

Department of Employment and
Economic Development
File No. 31435572-3

Donald C. Erickson, Fryberger, Buchenan, Smith & Frederick, P.A., Duluth, Minnesota (for relator)

Minneapolis Oxygen Comp-Joint Acct., Minneapolis, Minnesota (respondent employer)

Lee B. Nelson, Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Smith, Presiding Judge; Connolly, Judge; and Klaphake, Judge.

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[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

KLAPHAKE, Judge

Relator challenges an unemployment law judge's determination that he was dismissed for employment misconduct and thus ineligible for unemployment benefits. We affirm.

D E C I S I O N

An unemployment law judge (ULJ) determined that relator Eldo Abrahamson, who worked as a truck driver hauling hazardous materials for respondent Minneapolis Oxygen Comp-Joint Acct. (MOC), was discharged from his job for employment misconduct and was thus ineligible for unemployment benefits. We will reverse the ULJ's decision if, among other things, it is unsupported by substantial record evidence or affected by an error of law. Minn. Stat. § 268.105, subd. 7(d) (2012).

The purpose of unemployment benefits is to assist those who are unemployed through no fault of their own. Minn. Stat. § 268.03, subd. 1 (2012). An employee discharged for employment misconduct is thus ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2012). Employment misconduct is "any intentional, negligent, or indifferent conduct" that clearly displays "a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee" or "a substantial lack of concern for the employment." *Id.*, subd. 6(a) (2012). Whether an employee committed employment misconduct presents a mixed question of fact and law. *Stagg v. Vintage Place*, 796 N.W.2d 312, 315 (Minn. 2011). Whether particular conduct constitutes employment misconduct is a question of law that we review de novo. *Id.* But

whether an employee committed the conduct at issue is a finding of fact that we view "in the light most favorable to the [ULJ's] decision" and will not disturb if sustained by substantial evidence. *Id.*

Abrahamson was employed as a driver who hauled hazardous, explosive materials. Abrahamson's supervisor testified that, after a May 2012 anonymous phone complaint of Abrahamson's reckless driving, he warned Abrahamson that he would not tolerate driving complaints. Abrahamson was fired in July 2013 after MOC received a second anonymous phone complaint alleging that he drove recklessly.

The ULJ concluded that Abrahamson's reckless driving constituted a serious violation of the standards of behavior that MOC could reasonably expect of its employees, particularly after MOC warned Abrahamson that complaints would not be tolerated because MOC was engaged in the business of transporting hazardous and explosive materials. *See* Minn. Stat. § 268.095, subd. 6(a)(1) (defining "employment misconduct" to include "a serious violation" of an employer's reasonable standards of behavior).

Because the ULJ's finding of Abrahamson's reckless driving, if sustained by evidence, constitutes employment misconduct, we turn to whether the ULJ had a sufficient factual basis to make that finding. *See Stagg*, 796 N.W.2d at 315. A ULJ may "receive any evidence that possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs." Minn. R. 3310.2922 (2013). Abrahamson argues that reasonable, prudent people cannot, as a matter of law, "rely on anonymous telephone

call[s] in the conduct of their serious affairs," and must instead contact a complainant to obtain a signed statement or secure an appearance at a hearing. On reconsideration the ULJ reasoned, and we agree, that Abrahamson's supervisor received the complaint in the normal course of business and could reasonably take it seriously "as a prudent person engaged in the business of transporting hazardous materials across public highways." We conclude that the ULJ properly admitted the anonymous tip into evidence. *See* Minn. Stat. § 268.105, subd. 1(b) (2012) (stating that "all relevant facts" must be "clearly and fully developed" and the hearing need not be conducted in conformance with the "rules of evidence and other technical rules of procedure").

The ULJ corroborated the anonymous phone calls with testimony of both Abrahamson and his supervisor. The ULJ considered both "Abrahamson's admission that he was sufficiently angry at the motorcyclist . . . as to make a gesture," and Abrahamson's statement to his supervisor, "before even being questioned, that he had not cut the motorcyclist off." On that evidence, the ULJ found that, "more likely than not[,] the complaint by the motorcyclist was accurate." The ULJ reasoned that the corroborating testimony of Abrahamson and his supervisor indicated that the phone tip was "real and not fabricated" and the sequence of events was "more likely to have occurred in the manner described by the [motorcyclist] than [by] Abrahamson[]." The ULJ credited the complaint and found that Abrahamson "drove [MOC's] truck into the same lane and in front of [a] motorcyclist without allowing a reasonable distance between his truck and the motorcycle." Credibility determinations rest exclusively with the ULJ

and will not be disturbed on appeal. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

We thus conclude that substantial evidence sustains the ULJ's determination of employment misconduct.

Affirmed.